



FEDERAL ELECTION COMMISSION
Washington, DC 20463

APR 27 2018

Cleta Mitchell, Esq.
Foley & Lardner LLP
3000 K Street, NW
6th Floor
Washington, DC 20007

RE: MURs 7013 / 7015

Dear Ms. Mitchell:

On February 25 and 29, 2016, the Federal Election Commission ("Commission") notified your clients, Conservative Solutions PAC and Nancy Watkins in her official capacity as treasurer ("CSPAC"), of two complaints alleging violations of the Federal Election Campaign Act of 1971, as amended ("Act"). Copies of the complaints were forwarded to your clients at that time.

The Commission considered these matters on April 10 and 24, 2018. Having reviewed the allegations raised in the complaint, your client's response, and publicly available information, the Commission on April 10, 2018, found no reason to believe that CSPAC violated 52 U.S.C. § 30122. On April 24, 2018, the Commission approved the enclosed Factual and Legal Analysis, which provides the basis for the Commission's finding. This matter is now closed.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

If you have any questions, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler".

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Conservative Solutions PAC
4 and Nancy Watkins in her
5 official capacity as treasurer
6

MURs: 7013 / 7015

7 **I. GENERATION OF MATTER**

8 This matter was generated by two complaints filed with the Federal Election Commission
9 ("Commission") by the Citizens for Responsibility and Ethics in Washington and Noah
10 Bookbinder, and Campaign Legal Center, Democracy 21, J. Gerald Hebert, Paul S. Ryan, and
11 Tara Malloy. See 52 U.S.C. § 30109(a)(1). Conservative Solutions PAC and Nancy Watkins in
12 her official capacity as treasurer ("CSPAC"); an independent-expenditure-only political
13 committee supporting the 2016 presidential campaign of Marco Rubio, received a \$500,000
14 contribution that it attributed to IGX, LLC ("IGX") in its disclosure report to the Commission.
15 Complainants allege that Andrew Duncan violated 52 U.S.C. § 30122, a provision of the Federal
16 Election Campaign Act of 1971, as amended ("Act"), by making that contribution in the name of
17 IGX, and that IGX knowingly permitted its name to be used to make, and CSPAC knowingly
18 accepted, a contribution in the name of another. For the reasons explained below, the
19 Commission finds no reason to believe that CSPAC violated 52 U.S.C. § 30122.

20 **II. FACTUAL AND LEGAL ANALYSIS**

21 **A. Factual Background**

22 IGX, LLC is a limited liability company formed in Delaware on May 13, 2015.¹ IGX was
23 reported as making a \$500,000 contribution to CSPAC on October 26, 2015.²

¹ "IGX LLC" Dun & Bradstreet Report. IGX's registered agent is the Corporation Service Company located at 2711 Centerville Rd., Suite 400, Wilmington, DE, 19808; that address is provided on CSPAC's report disclosing the IGX contribution to the Commission.

1 Andrew Duncan is the CEO and “member/owner” of IGX, LLC and describes IGX as an
2 investment vehicle for entertainment and technology projects.³ He claims that his “employment
3 with IGX is publicly known,” citing a disclosure report filed with the Commission disclosing
4 Duncan’s personal contribution to Marco Rubio’s authorized committee.⁴

5 Conservative Solutions PAC is an independent-expenditure-only committee that
6 registered with the Commission on February 4, 2013. Nancy Watkins is its treasurer of record.
7 During the 2016 election cycle, CSPAC has received over \$60 million in contributions and made
8 over \$55 million in independent expenditures supporting Marco Rubio or opposing Rubio’s
9 opponents in the 2016 presidential election.⁵ CSPAC reported receiving a \$500,000 contribution
10 from IGX on October 26, 2015.⁶

11 **B. Contributions in the Name of Another**

12 1. Legal Standard

13 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
14 deposit of money or anything of value made by any person for the purpose of influencing any
15 election for Federal office.”⁷ The term “person” for purposes of the Act and Commission
16 regulations includes partnerships, corporations, and “any other organization or group of

2 CSPAC, 2015 Year-End Report at 26 (Jan. 31, 2016).

3 Duncan Resp. at 2 (Apr. 26, 2016).

4 Duncan Resp. at 2; *see* Marco Rubio for President, Amend. 2015 Oct. Quarterly Report at 736 (Oct. 30, 2015).

5 *See, e.g.*, 24/48 Hour Independent Expenditure Report (“IE Report”) Mar. 11, 2016 (supporting Marco Rubio); IE Report, Feb. 16, 2016 (opposing Jeb Bush).

6 CSPAC, 2015 Year-End Report at 26 (Jan. 31, 2016).

7 52 U.S.C. § 30101(8)(A).

persons.”⁸ The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.⁹ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.¹⁰

The Act and the Commission’s implementing regulations provide that a person who furnishes another with funds for the purpose of contributing to a candidate or committee “makes” the resulting contribution.¹¹ This is true whether funds are advanced to another person to make a contribution in that person’s name or promised as reimbursement of a solicited contribution.¹²

⁸ *Id.* § 30101(11); 11 C.F.R. § 100.10. To promote the limits on the amount that any one person may contribute to a candidate in a given election cycle, the Act directs that “all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.” 52 U.S.C. § 30116(a)(8). The Commission has implemented that provision through its earmarking regulation. *See* 11 C.F.R. § 110.6. Like the statutory provision it implements, the regulation applies only to “contributions by a person made on behalf of or to a candidate.” *Id.* By their terms, neither the earmarking provision of the Act nor the Commission’s implementing regulation reaches contributions made to independent-expenditure-only political committees, as implicated in this matter.

⁹ 52 U.S.C. § 30122.

¹⁰ 11 C.F.R. § 110.4(b)(2)(i)–(ii). *See* First Gen. Counsel’s Report, MUR 6930 (Prakazrel “Pras” Michel, *et al.*).

¹¹ *See United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011) (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *United States v. O’Donnell*, 608 F.3d 546, 550 (9th Cir. 2010); *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-Section 441f)).

¹² *O’Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074,

1 2. Analysis

2 There is no factual support in the record supporting the allegation that CSPAC may have
3 knowingly accepted a contribution in the name of another. There is no evidence that CSPAC
4 was in contact with Duncan or IGX, or that CSPAC had any reasonable basis to suspect that the
5 IGX contribution was made in the name of another. Moreover, CSPAC's treasurer submitted a
6 sworn affidavit stating that she "had no reason to believe that the contribution from IGX, LLC
7 was from any source other than IGX, LLC."¹³ On this record, therefore, the Commission finds
8 no reason to believe that Conservative Solutions PAC and Nancy H. Watkins in her official
9 capacity as treasurer violated 52 U.S.C. § 30122 as alleged.

1080 (9th Cir. 2015) (holding that defendant's "unconditional gifts" to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

¹³ See Affidavit of Nancy Watkins at ¶ 14.